IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NOS. 110, 130, 420 TO 424 OF 2000, 31, 78, 96, 335, 362 AND 228 OF 2001.

WRIT PETITION NO. 110 OF 2000.

Shri Ramnath Parwatkar,
Painter, Goa Medical College,
Bambolim. ... Petitioner.

Versus

1. State of Goa through its
   Chief Secretary, Secretariat,
   Panaji.
2. The Dean, Goa Medical College,
   Bambolim. ... Respondents.

Mr. M.S. Sonak and Mr. D. Pangam, Advocates for the Petitioner.

Mr. A.N.S. Nadkarni, Advocate General with Ms. W. Coutinho, Government Advocate for the Respondents.

WRIT PETITION NO. 130 OF 2000.

Shri Mahadev B. Pawar,
Senior Radiographic Technician,
Goa Medical College, Bambolim. ... Petitioner.

Versus

1. State of Goa through its
   Chief Secretary, Secretariat,
   Panaji.
2. The Dean, Goa Medical College,
   Bambolim. ... Respondents.

Mr. M.S. Sonak and Mr. D. Pangam, Advocates for the Petitioner.

Mr. A.N.S. Nadkarni, Advocate General with Ms. W. Coutinho, Government Advocate for the Respondents.

WRIT PETITION NO. 420 OF 2000.

Shri Gajanan Kesarkar, Junior
Technician, Goa Medical College,
Bambolim. ... Petitioner.

Versus

1. State of Goa through its
   Chief Secretary, Secretariat,
   Panaji.
2. The Dean, Goa Medical College,
   Bambolim. ... Respondents.

Mr. M.S. Sonak and Mr. D. Pangam, Advocates for the Petitioner.

Mr. A.N.S. Nadkarni, Advocate General with Mr. H.D. Naik, Additional Government Advocate for the Respondents.

WRIT PETITION NO. 421 OF 2000.

1. Shri Sunder Patil, Senior
   Technician, Goa Medical
   College, Bambolim.
2. Shri Antonio D'Souza, Senior
   Technician, Goa Medical
   College, Bambolim. ... Petitioners.

Versus

1. State of Goa through its
   Chief Secretary, Secretariat,
   Panaji.
2. The Dean, Goa Medical College,
   Bambolim. ... Respondents.

Mr. M.S. Sonak and Mr. D. Pangam, Advocates for the Petitioners.

Mr. A.N.S. Nadkarni, Advocate General with Mr. H.D. Naik, Additional Government Advocate for the Respondents.

WRIT PETITION NO. 422 OF 2000.

Shri Ranganath Ladu Naik,
r/o Pandit Wada, Upper

Bazaar, Ponda. ... Petitioner.

Versus

1. State of Goa through
   Chief Secretary, Secretariat,
   Panaji.
2. The Principal, Goa Engineering
   College, Farmagudi, Ponda. ... Respondents.

Mr. M.S. Sonak and Mr. D. Pangam, Advocates for the Petitioner.

Mr. A.N.S. Nadkarni, Advocate General with Mr. H.D. Naik, Additional Government Advocate for the Respondents.

WRIT PETITION NO. 423 OF 2000.

Shri Antonio C.L. Dourado,
Lab. Technician/Junior
Technician, Goa Medical
College, Bambolim. ... Petitioner.

Versus

1. State of Goa through its
   Chief Secretary, Secretariat,
   Panaji.
2. The Dean, Goa Medical College,
   Bambolim. ... Respondents.

Mr. M.S. Sonak and Mr. D. Pangam, Advocates for the Petitioner.

Mr. A.N.S. Nadkarni, Advocate General with Mr. P.A. Kamat, Government Advocate for the Respondents.

WRIT PETITION NO. 424 OF 2000.

Shri U.S. Pujari, Junior
Technician, Goa Medical
College, Bambolim. ... Petitioner.

Versus

1. State of Goa through its
   Chief Secretary, Secretariat,
   Panaji.
2. The Dean, Goa Medical College,

Bambolim. ... Respondents.

Mr. M.S. Sonak and Mr. D. Pangam, Advocates for the Petitioner.

Mr. A.N.S. Nadkarni, Advocate General with Ms. W. Coutinho, Government Advocate for the Respondents.

WRIT PETITION NO. 31 OF 2001.

Shri Issac Mohammad, Lab. Assistant, Goa Medical College, Panaji. ... Petitioner.

Versus

1. State of Goa through its Chief Secretary, Secretariat, Panaji.
2. The Dean, Goa Medical College, Bambolim. ... Respondents.

Mr. M.S. Sonak and Mr. D. Pangam, Advocates for the Petitioner.

Mr. A.N.S. Nadkarni, Advocate General with Ms. W. Coutinho, Government Advocate for the Respondents.

WRIT PETITION NO. 78 OF 2001.

Shri Shaikh Akbar Ali Mamlekar, r/o Posrem Bhat, Taleigao. ... Petitioner.

Versus

1. Principal, Goa College of Pharmacy, Panaji.
2. State of Goa through its Chief Secretary, Secretariat, Panaji.
3. Advocate General, State of Goa, Panaji. ... Respondents.

Mr. M.S. Sonak and Mr. D. Pangam, Advocates for the Petitioner.

Mr. A.N.S. Nadkarni, Advocate General with Ms. W.

Coutinho, Government Advocate for Respondents 1 and 2.

WRIT PETITION NO. 96 OF 2001.

Ramdas Parab, r/o Ecoxim,
Bardez Goa. ... Petitioner.

Versus

1. State of Goa through its
   Chief Secretary, Secretariat,
   Panaji.
2. Director of Animal Husbandry
   and Veterinary Services,
   Pashu Samvardhan Bhavan,
   Patto, Panaji. ... Respondents.

Mr. Sudin Usgaonkar and Ms. R. Kamat, Advocates for the Petitioner.

Mr. A.N.S. Nadkarni, Advocate General with Mr. P.A. Kamat, Government Advocate for the Respondents.

WRIT PETITION NO. 335 OF 2001.

Shri Premanand Uttam Naik
Dessai, Driver, r/o H. No.
8/E, Dicarpale, P.O. Navelim,
Salcete. ... Petitioner.

Versus

1. State of Goa through the
   Chief Secretary, Secretariat,
   Panaji.
2. The Director, Directorate of
   Health Services, Campal, Panaji.
3. The Director of Accounts,
   Directorate of Accounts,
   Panaji.
4. Medical Superintendent cum
   Deputy Director, Hospicio
   Hospital, Margao. ... Respondents.

Mr. J.A. Lobo, Advocate for the Petitioner.

Mr. A.N.S. Nadkarni, Advocate General with Mr. H.D. Naik, Additional Government Advocate for the Respondents.

WRIT PETITION NO. 362 OF 2001.

Shri Shivanand R. Naik,
Driver, Forest Department,
North Goa Division, Ponda. ... Petitioner.

Versus

1. State of Goa through the
   Chief Secretary, Secretariat,
   Panaji.
2. Department of Forest through
   Conservator of Forests,
   Junta House, Panaji. ... Respondents.

Mr. M.S. Sonak and Mr. D. Pangam, Advocates for the Petitioner.

Mr. A.N.S. Nadkarni, Advocate General with Ms. W. Coutinho, Government Advocate for the Respondents.

WRIT PETITION NO. 228 OF 2001.

Shri Madhu Bhikaji Kamulkar,
Driver, Works Division No. 1,
Pernem. ... Petitioner.

Versus

1. State of Goa through its
   Chief Secretary, Secretariat,
   Panaji.
2. Chief Engineer, P.W.D.,
   Panaji.
3. Executive Engineer,
   Irrigation Department,
   Panaji. ... Respondents.

Mr. D.P. Bhise, Advocate for the Petitioner.

Ms. W. Coutinho, Government Advocate for the Respondents.

Coram : P.V. HARDAS AND
D.G. KARNIK, JJ.

Date : 1st April 2004.

ORAL JUDGMENT (PER HARDAS, J.)

This petition and the other petitions, since they raise a common question for determination, are being decided by this Judgment.

2. The facts in brief, as are necessary for the decision of these petitions, are stated hereunder:-

On 21st April 1982, the petitioner in Writ Petition No. 110 of 2000 was appointed on daily wages as a painter in the workshop of the Goa Medical College. Thereafter, on 18th October 1991, the petitioner was regularised in the post of painter in the scale of Rs. 950-1400. On 13th October 1999, the second respondent issued orders indicating that the petitioner would stand retired on superannuation with effect from 30th April 2000. The petitioner, thereafter, addressed a representation to the respondents contending therein that he is a workman and an artisan within the meaning of the Fundamental Rule 56(b) and as such was entitled to be continued in service till he attains the age of 60 years. Since the respondents have not considered the representation of the petitioner favourably, this petition came to be filed.

3. In Writ Petition No. 130 of 2000, the

petitioner was appointed as Radiographer on 11th July 1966 in the Goa Medical College. The petitioner was, thereafter, promoted on 6th August 1970 temporarily to the post of X-Ray Technician. On 7th September 1972, the petitioner was confirmed in the post of Radiographer with effect from 1st July 1972. The petitioner was, thereafter, on 13th September 1977, confirmed in the permanent post of X-Ray Technician with effect from 12th September 1977. Thereafter, the post of X-Ray Technician was redesignated as Radiographic Technician. The petitioner was then promoted temporarily to the post of Senior Radiographic Technician on 18th January 1999. The petitioner was, thus, retired on superannuation on attaining the age of 58 years.

4. In Writ Petition No. 420 of 2000, in 1965 the petitioner was appointed as a Laboratory Technician in the Directorate of Health Services and in 1975 petitioner was appointed as Laboratory Technician in the Goa Medical College (Blood Bank). A common Order, dated 13th October 1999, came to be passed stating that the petitioner would retire on attaining the age of 58 years.

5. In Writ Petition No. 421 of 2000, the first petitioner was appointed as Laboratory Technician in the

Goa Medical College on 11th July 1966 and the second petitioner came to be appointed on 1st July 1966. The first petitioner was promoted as Senior Technician on adhoc basis and was regularised with effect from 20th February 1990. On 1st January 1983 the second petitioner was promoted as Senior Technician on adhoc basis and was subsequently confirmed. By a common Order the second petitioner was stated to be retiring on 31st May 2000 on attaining the age of superannuation. Subsequently, by an Order, dated 11th October 2000, the second petitioner was stated to be retired with effect from 31st December 2000 while the first petitioner with effect from 30th June 2001.

6. In Writ Petition No. 422 of 2000, the petitioner was appointed as driver in the Electricity Department of Government of Goa, on 4th May 1964. The petitioner has, thus, been made to retire on attaining the age of 58 years.

7. In Writ Petition No. 423 of 2000, the petitioner was appointed as a Junior Technician in the Goa Medical College. The petitioner, thus, being retired at the age of 58 years.

8. In Writ Petition No. 424 of 2000, the

petitioner came to be appointed as Laboratory Assistant, on 19th November 1966 and, thereafter, promoted as a Junior Technician. The petitioner was, thus, retired on attaining the age of 58 years.

9. In all the other petitions, namely, in Writ Petition No. 31 of 2001, the petitioner was initially appointed as a Ward Attendant and, thereafter, promoted as Laboratory Assistant and was retired on attaining the age of 58 years. In Writ Petition No. 78 of 2001, the petitioner was appointed as Peon in the Goa College of Pharmacy and later appointed as a Laboratory Assistant and was being retired at the age of 58 years. In Writ Petition No. 96 of 2001, the petitioner was appointed as a driver in the Department of Animal Husbandry and Veterinary Services and was being retired at the age of 58 years. In Writ Petition No. 335 of 2001, the petitioner was appointed as a Driver in the Directorate of Health Services and was being retired at the age of 58 years. In Writ Petition No. 362 of 2001, the petitioner was appointed as a Driver in the Forest Department and was being retired on attaining the age of 58 years. In Writ Petition No. 228 of 2001, the petitioner was appointed as a Driver and was retired on attaining the age of 58 years.

10. In all these petitions it is contended that as on 30th May 1987 the age of retirement of the petitioners was governed by Rule 56(b) of the Fundamental Rules and, therefore, the Goa Civil Services (Retirement) Rules are ultravires to the extent of reducing the age of superannuation to 58 years on the ground that no prior approval of the Central Government, as is required under Section 60(6) of the Goa, Daman and Diu Re-organization Act, 1987, had been obtained before the Goa Civil Services (Retirement) Rules, 2000 were implemented. It is also urged that the petitioners are retired on the basis of the application of the said Rules.

11. On behalf of the respondents, it is urged that the Fundamental Rules were never made applicable either by express or implied action of the State Government prior to 30th May 1987. Since the Fundamental Rule 56(b) was never made applicable, the Goa Civil Services (Recruitment) Rules, 2000 are not ultravires the provisions of Section 60(6) of the Goa, Daman and Diu Re-organization Act, 1987.

12. Rule 56 reads as under:-

> "F.R. 56 - 1(a) Except as otherwise provided in this rule, every Government servant shall retire from

> service on the afternoon of the last day of the month in which he attains the age of sixty years:
>
> Provided that a Government servant whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of sixty years.
>
> (b) A workman who is governed by these rules shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years.
>
> NOTE:- In this Clause, a workman means a highly skilled, semi-skilled, or unskilled artisan employed on a monthly rate of pay in an industrial or work-charged establishment."

In view of this Rule, it was urged before us that the petitioners in all these petitions could only be retired from service on attaining the age of 60 years.

13. On 30th May 1987 Goa became a State in view of the enactment of Goa, Daman and Diu State Re-organization Act, 1987. By virtue of Section 60(1), all the employees of the Union Territory in the District of Goa were continued in service in connection with the affairs of State of Goa and they were provisionally allotted to serve in connection with the affairs of the State of Goa. Sub-Section (6) of Section 60 mandates that the service conditions of such employees, who were allotted to the State of Goa could not be varied to their disadvantage except with the previous approval of the Central Government. Sub-Section (6) of Section 60,

which is reproduced below reads as under:-

> "(6) - Nothing in this section shall be deemed to affect, on or after the appointed day, the operation of provisions of Chapter I of Part XIV of the Constitution in relation to the determination of the conditions of service of persons serving in connection with the affairs of the State of Goa or the Union;
>
> Provided that the conditions of service applicable immediately before the appointed day to the case of any person referred to in Sub-section (1) or Sub-section (2) shall not be varied to his disadvantage except with the previous approval of the Central Government."

14. The respondents have filed an affidavit, dated 16th March 2004, of Shri S.V. Naik, Joint Secretary (Personnel), Government of Goa. In the said affidavit it is stated that the Government after the Cabinet decision had placed the Goa Civil Services (Retirement) Rules, 2000 before the Central Government for approval and the Central Government by its letter, dated 30th July 2001, has granted ex-post facto approval to the said Rules under Proviso to Section 60(6) of the Goa, Daman and Diu Re-organization Act, 1987 for altering the age of retirement from 60 to 58 years. In the said affidavit, at paragraph 3, it is further stated that without prejudice to the rights and contentions of the Government the Government has taken a decision to consider granting pay and allowance to the petitioners

and the persons similarly situated till the date preceding the day of approval of Central Government to the said Rules.

15. Even if this Court was called upon to decide the question whether ex-post facto approval could be granted and even if this Court was to hold in favour of the petitioners that ex-post facto approval could not be granted, the petitioners would be entitled for the monetary relief, which the Government in the affidavit, referred to above, in paragraph 3 has stated that the Government would grant pay and allowances to the petitioners till the date preceding the day of approval of the Central Government.

16. According to us, even if this Court was to hold in favour of the petitioners, at the most, the petitioners would be entitled to the pay and allowances up to the date preceding the grant of approval by the Central Government. The learned counsel for the petitioners also stated that, in view of the statement in the affidavit, the petitioners have been granted the relief, which has been prayed for.

17. We, therefore, accept this statement made on behalf of the respondents and direct the Government to

grant pay and allowances to the petitioners till the date preceding the day of approval of the Central Government to the Goa Civil Services (Retirement) Rules, 2000. Rule is, therefore, made absolute on the above terms with no order as to costs.

(P.V. HARDAS)
JUDGE.

(D.G. KARNIK)
JUDGE.

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